

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
NOVEMBER 1, 2004

**D043847        In re Kitty I. et al., Juveniles**

The petition for rehearing is denied.

**D045194        In re Owens on Habeas Corpus**

The petition for writ of habeas corpus In re Owens D045194 will be considered at the same time as the pending appeal People v. Owens D043994. A response to the petition is to be filed on or before two weeks from the date of this order. Petitioner may reply within one week of the filing of the response.

**D042667        Brandelius v. Wilson**

The judgment is affirmed. Nares, Acting P.J.; We Concur: O'Rourke, J., Irion, J.

**D043378        Ballard v. De Rito**

The judgment is affirmed. Nares, J.; We Concur: Benke, Acting P.J., O'Rourke, J.

**D044982        Regina K. et al. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**

By failing to file a timely petition for writ relief, the notice of intent is deemed to be abandoned. The case as the Regina K. is dismissed.

Real Pary in Interest's response to Patrick A.'s Petition for Extraordinary Writ is due 10 days from the date of this order.

**D042623        People v. Vasquez**

The judgment is reversed. The sentence is vacated and the case is remanded to the superior court to conduct a new sentencing hearing consistent with the principles discussed in this opinion. O'Rourke, J.; I Concur: Huffman, Acting P.J., I Dissent (See Opinion): Irion, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
NOVEMBER 2, 2004

**D042454        People v. Smith**

The judgment is affirmed. Benke, Acting P.J.; We Concur: Nares, J., Haller, J.

**D044129        In re Alexander L., a Juvenile**

The request for publication is denied.

**D042645        People v. Calhoun**

We reverse the true findings on the section 20001, subdivision (c) allegations against Calhoun and vacate the two five-year enhancements imposed on him; we vacate the two upper six-year terms imposed on Waller; and we remand both matters for resentencing consistent with the views expressed in this opinion. In all other respects, we affirm the judgments. CERTIFIED FOR PUBLICATION. McDonald, J.; I Concur: McIntyre, J.; I Concur and Dissent (by opinion): McConnell, P.J.

**D042499        In re Aaron M., a Juvenile**

The petition for rehearing is denied.

**D044510        In re N.B., a Juvenile**

The judgment is affirmed. Aaron, J.; We Concur: McDonald, Acting P.J.; Irion, J.

**D043156        Conservatorship of the Person and Estate of Louise Herlands**

The award for lost income is stricken from the reimbursement order. As so modified, the reimbursement order is affirmed. The conservatorship judgment is affirmed. Herlands to bear his own costs on appeal. Haller, Acting P.J.; We Concur: Aaron, J., Irion, J.

**D043083        People v. Freeman**

Freeman's conviction for possessing a controlled substance is affirmed. The finding that he has suffered a strike prior is reversed and the matter remanded to allow Freeman the opportunity to litigate this issue. (See *People v. Monge* (1997) 16 Cal.4th 826, 845.) Aaron, J.; We Concur: McConnell, P.J., McIntyre, J.

**D041499        Robles v. Autozone Inc., et al.**

The judgment is reversed in part to permit further proceedings on the punitive damages claim against AutoZone only, while the balance of the judgment is affirmed. AutoZone is to pay all costs on appeal. Huffman, Acting P.J.; I Concur: McDonald, J.; Concurring Opinion: Haller, J.

**D043917        People v. Leon**

The order that Leon pay \$13,450 victim restitution is modified to order him to pay \$2,450. The judgment is affirmed as modified. McDonald, Acting P.J.; We Concur: McIntyre, J., Irion, J.

**D044267        In re Ryan A. et al., Juveniles**

The order of the court finding the children are adoptable and terminating parental rights is affirmed. Benke, J.; We Concur: McConnell, P.J., O'Rourke, J.

**D044317        People v. Clay**

The judgment is affirmed. McConnell, P.J.; We Concur: Haller, J., Irion, J.

**D044837        In re Trista R., a Juvenile**

The appeal is dismissed. Aaron, J.; We Concur: Nares, Acting P.J., O'Rourke, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
NOVEMBER 2, 2004 (Continued)

**D044269        In re Ozzy W., a Juvenile**

The judgment is affirmed. O'Rourke, J.; We Concur: McConnell, P.J., Aaron, J.

**D044842        In re Dante M., a Juvenile**

The appeal is dismissed. Irion, J.; We Concur: Benke, Acting P.J., Huffman, J.

**D043012        Gaggero et al. v. County of San Diego**

Judgment is affirmed. Benke, Acting P.J.; We Concur: Nares, J., McIntyre, J.

**D041736        People v. Williams**

Petition for rehearing is denied.

**D044651        Crow v. Superior Court of San Diego County/Brenner**

In light of the superior court's order filed on October 20, 2004, the petition for writ of mandate filed by Bradley Crow in this court is moot. The order to show cause issued on October 14, 2004, is discharged and the petition is dismissed.

**D041700        Edenbaum v. Ralph's Grocery Company et al.**

The petition for rehearing is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
NOVEMBER 3, 2004

**D042860        Baumer v. McGruer et al.**

The judgment is affirmed. The parties are to bear their own costs. Haller, J.; We Concur: McConnell, P.J., McDonald, J.

**D045184        In re Frediani on Habeas Corpus**

The petition is denied.

**D043112        People v. Belmont**

The judgment is affirmed. The superior court clerk shall change the clerical error in the abstract of judgment to state Penal Code section 192, subdivision (a), and send a corrected abstract of judgment to the Department of Corrections. Haller, J.; We Concur: McConnell, P.J., Huffman, J.

**D044460        People v. Livas**

Upon filing a Request to Dismiss Appeal, personally signed by the defendant, the appeal is dismissed and the remittitur is ordered to issue immediately (Cal. Rules of Court, rule 30.3).

**D044023        In re Randy T., a Juvenile**

The judgment and order are affirmed. O'Rourke, J.; We Concur: Nares, Acting P.J., Haller, J.

**D043754        In re Luis Z., a Juvenile**

**D044414        In re Luis Z., a Juvenile**

(Consolidated) The judgment is affirmed. O'Rourke, J.; We Concur: McConnell, P.J., McDonald, J.

**D043673        Estate of Hatcher, Deceased**

The order is affirmed. McConnell, P.J.; We Concur: Huffman, J., McDonald, J.

**D045319        Schlitz v. Superior Court of San Diego County/People**

The petition is denied.

**D043278        Johnson et al. v. State Water Resources Control Board**

The opinion filed October 7, 2004 is ordered certified for publication.

**D044228        People v. Turley**

The judgment is affirmed. O'Rourke, J.; We Concur: McConnell, P.J., McDonald, J.

**D043871        In re Katelyn M., a Juvenile**

The request for partial publication is denied.

**D044099        People v. Washinton**

The judgment is affirmed. Haller, J.; We Concur: Nares, Acting P.J., McDonald, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
NOVEMBER 4, 2004

**D043137      People v. Motter**

The request for publication of the opinion is denied.

**D043191      People v. Rodriguez**

We reverse the judgment on counts 1 and 2, the receiving stolen vehicle convictions (Pen. Code, section 496d) and order the court to strike these convictions. The judgment is affirmed in all other respects. The trial court is directed to amend the abstract of judgment to reflect the modification and to forward a certified copy of the amended abstract to the Department of Corrections. Haller, J.; We Concur: McConnell, P.J., Huffman, J.

**D042761      Szaniawski v. Szaniawski**

The order is affirmed. Nares, J.; We Concur: Benke, Acting P.J., Aaron, J.

**D043951      In re Eugenea W., a Juvenile**

The judgment is affirmed. Irion, J.; We Concur: Benke, Acting P.J., O'Rourke, J.

**D045282      In re Cochran on Habeas Corpus**

The petition is denied.

**D043647      People v. Torres**

The judgment is affirmed. Irion, J.; We Concur: McConnell, P.J., Nares, J.

**D042947      Graham v. Glen**

The judgment is affirmed. Nares, J.; We Concur: Benke, Acting P.J., Aaron, J.

**D044759      Campbell et al. v. Airtouch Cellular et al./Carroll et al./Rinis et al.**

Upon filing a written abandonment of appeal, the appeal filed by objectors and appellants Jerilyn Marlowe and Molly White, is dismissed and the remittitur is ordered to issue immediately.

**D036144      In re Marriage of Butler and Harris et al.**

Upon remand from, and as directed by, the California Supreme Court, we remand the matter to the superior court. The superior court shall reconsider its order for grandparent visitation by utilizing the "rebuttable presumption affecting the burden of proof that grandparent visitation [is] not in the child's best interest" when objected to by the sole custodial parent (Fam. Code, section 3104, subd. (f). (In re Marriage of Harris (2004) 34 Cal.4th 210, 214, 230). That is, "[because] the mother was awarded sole custody of Emily and objected to grandparent visitation... the grandparents were required to overcome a rebuttable presumption that visitation is not in Emily's best interest." (Id. at p. 230.) Further, as directed by the Supreme Court, the superior court shall reconsider its order "in light of...the superior court's subsequent order terminating the father's parental rights." (Ibid).

**D045298      People v. Chakiris**

In that no appealable order or judgment has yet been entered, the notice of appeal is premature. The appeal is dismissed without prejudice to refiling a notice of appeal after an order or judgment has been entered.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
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DIVISION ONE  
NOVEMBER 4, 2004 (Continued)

**D045117      Prasith B. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**

The attorney for petitioner Prasith B. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 39.1B will not be filed as there are no viable issues for writ review. The case is dismissed.

**D045146      Christina D. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**

The attorney for petitioner Christina D. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 39.1B will not be filed as there are no viable issues for writ review. The case is dismissed.

**D045195      Lisa C. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**

The attorney for petitioner Lisa C. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 39.1B will not be filed as there are no viable issues for writ review. The case is dismissed.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
NOVEMBER 5, 2004

**D044001        Clarendon National Insurance Company v. Target Financial & Insurance Services**  
The judgment is affirmed. Haller, Acting P.J.; We Concur: McIntyre, J., Aaron, J.

**D044591        In re Austin W., a Juvenile**  
Minors' unopposed motion to dismiss the appeal is granted.

**D042680        Solar Turbines, Inc. v. Department of Industrial Relations et al.**  
The order denying Solar's request for attorney fees is affirmed. Benke, Acting P.J.; We Concur: Aaron, J., Irion, J.

**D043193        People v. Thurmond**  
For the foregoing reasons, Thurmond's conviction of possession of methamphetamine as charged in count 3 is reversed, and the concurrent sentence imposed on count 2 is stayed pursuant to Penal Code section 654. The trial court is directed to prepare and forward to the Department of Corrections an amended abstract of judgment reflecting these changes. As modified, the judgment is affirmed. Irion, J.; We Concur: Haller, Acting P.J., McIntyre, J.

**D045321        In re Smith on Habeas Corpus**  
The petition is denied.

**D045322        In re Smith on Habeas Corpus**  
The petition is denied.

**D043731        Hansen v. Phillips**  
The judgment is affirmed. Aaron, J.; We Concur: Huffman, Acting P.J., Haller, J.

**D045120        In re Robles, Jr. on Habeas Corpus**  
The petition is denied.

**D044015        Margo G. v. County of San Diego**  
Appellant's motion for relief from default and to vacate the dismissal for failure to file appellant's opening brief is GRANTED. Appellant's opening brief is due 30 days from the date of this order.